

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

HOMESALES, INC.,

Plaintiff,

vs.

Civil Action 2:10-CV-421
Judge Frost
Magistrate Judge King

FREDERICK H. MITCHELL,

Defendant.

REPORT AND RECOMMENDATION

Defendant Frederick H. Mitchell has filed a notice of removal of this action from the Gwinnett County, Georgia, Magistrate's Court. Doc. No. 2. Defendant asserts that the case arises under federal law and is therefore removable pursuant to 28 U.S.C. §1441(b).

Federal law authorizes the removal of an action from a state court "to the district court of the United States for the district and division embracing the place where such action is pending." 28 U.S.C. §1441(a). The Southern District of Ohio does not include Gwinnett County, Georgia. Compare 28 U.S.C. §115 (Ohio judicial districts) with 28 U.S.C. §90 (Georgia judicial districts).

Because the case was improperly removed to this Court,¹ it is **RECOMMENDED** that the action be remanded to the Gwinnett County, Georgia, Magistrate's Court.

If any party seeks review by the District Judge of this *Report and Recommendation*, that party may, within fourteen (14) days, file and serve on all parties objections to the *Report and Recommendation*, specifically designating this *Report and Recommendation*, and the part thereof in question, as well as the basis for objection thereto. 28

¹It also appears that not all named defendants joined in the notice of removal.

U.S.C. §636(b)(1); F.R. Civ. P. 72(b). Response to objections must be filed within fourteen (14) days after being served with a copy thereof. F.R. Civ. P. 72(b).

The parties are specifically advised that failure to object to the *Report and Recommendation* will result in a waiver of the right to *de novo* review by the District Judge and of the right to appeal the decision of the District Court adopting the *Report and Recommendation*. See *Thomas v. Arn*, 474 U.S. 140 (1985); *Smith v. Detroit Federation of Teachers, Local 231 etc.*, 829 F.2d 1370 (6th Cir. 1987); *United States v. Walters*, 638 F.2d 947 (6th Cir. 1981).

May 14, 2010

s/Norah McCann King
Norah M'Cann King
United States Magistrate Judge